

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

_____)
DWIGHT RUSSELL, et. al.,)
Plaintiffs,)
VS.) CIVIL ACTION NO.
4:19-CV-226
_____)
HARRIS COUNTY, TEXAS, et. al.,) 1:32 P.M.
Defendants.)
_____)

STATUS CONFERENCE
BEFORE THE HONORABLE LEE H. ROSENTHAL
CHIEF UNITED STATES DISTRICT JUDGE
JUNE 11, 2020

APPEARANCES: (All parties appeared via video conference)

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ALSO PRESENT:

JUDGE HERB RITCHIE
337th Criminal Court

1 APPEARANCES CONTINUED:

2 **ALSO PRESENT:**

JUDGE BRIAN WARREN (Via Telephone)
3 209th Criminal Court

4 MR. ALEX BUNIN
MS. SARAH WOOD
5 Harris County Public Defender's Office

6 MS. KIM OGG
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24 Proceedings recorded by mechanical stenography, transcript
25 produced by computer.

PROCEEDINGS

(The following proceedings held via video conference.)

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THE COURT: All right. I think we're ready to begin. We'll start by taking -- having those who are, first, representing parties or interested nonparties and have a speaking role today to identify yourselves and on whose behalf you are speaking, and then I'll hear from any others who are present, just so we know who's on the line.

Go ahead, please.

MR. MANNE: Neal Manne for plaintiffs.

THE COURT: Thank you, sir.

MR. KARAKATSANIS: Alec Karakatsanis for plaintiffs.

JUDGE RITCHIE: Judge Herb Ritchie, and I'm an interested nonparty appearing on behalf of the criminal district judges of Harris County.

THE COURT: Judge Ritchie, I think you're not only an interested nonparty, you are appearing as a critical-to-the-process interested nonparty. Welcome to the party.

JUDGE RITCHIE: Thank you, ma'am.

MR. DUFEE: Good afternoon, Judge. This is Scott Durfee. I'm here for District Attorney Kim Ogg.

THE COURT: Thank you.

1 **MR. FOGLER:** Your Honor, this is Murray Fogler for the
2 sheriff.

3 **THE COURT:** Thank you.

4 **MS. SPINKS:** Your Honor, this is Melissa Spinks for
5 Harris County.

6 **THE COURT:** Very good.

7 **MR. BUNIN:** Your Honor, it's Alex Bunin, nonparty,
8 Harris County Public Defender.

9 **THE COURT:** I have been practicing the pronunciation
10 of your name all week, Mr. Bunin.

11 **MS. WOOD:** And I'm Sarah Wood also with the public
12 defender's office.

13 **THE COURT:** Thank you.

14 **MS. KASE:** Kathryn Kase, legal counsel to nonparty
15 Harris County Judge Lina Hidalgo.

16 **THE COURT:** Thank you very much.

17 **MR. BIGGS:** Good afternoon, Your Honor. Adam Biggs
18 and Eric Hudson on behalf of state intervenors.

19 **THE COURT:** Very good. Thank you.

20 **MR. THIESSEN:** Judge, I'm Mark Thiessen, president of
21 Harris County Criminal Lawyers Association.

22 **THE COURT:** Thank you for being here, sir.

23 **MR. THIESSEN:** Thank you.

24 **THE COURT:** Okay. Are all the others who are
25 representing interested parties or interested nonparties on the

1 phone going to be present, but not speaking?

13:35:43 2 Ms. Rossi, for example?

13:35:46 3 **MS. ROSSI:** Yes. That's my intent, Your Honor.

13:35:48 4 **THE COURT:** All right. Thank you.

13:35:49 5 Mr. Steffensen?

13:35:51 6 **MR. STEFFENSEN:** Correct, Your Honor. Thank you.

13:35:54 7 **THE COURT:** And who are you appearing for, please?

13:35:57 8 **MR. STEFFENSEN:** I am here for the plaintiffs.

13:35:59 9 **THE COURT:** Very good. Thank you.

13:36:00 10 Anybody else in that category?

13:36:07 11 **MR. GRINSTEIN:** Your Honor, Joseph Grinstein for the
12 plaintiffs.

13:36:09 13 **THE COURT:** Very good.

13:36:09 14 And I see -- is District Attorney Ogg intending to
15 speak, or will Mr. Durfee speak?

13:36:20 16 **MS. OGG:** Mr. Durfee, my general counsel's here to
17 speak for me, but I'm present, Your Honor, and always available.

13:36:25 18 **THE COURT:** Thank you. And I very much appreciate
19 that.

13:36:30 20 **MR. DURFEE:** And, Your Honor --

13:36:30 21 **THE COURT:** All right. Yes?

13:36:30 22 **MR. DURFEE:** I'm sorry, Your Honor. This is Scott
23 Durfee. Mr. Mitcham is our first assistant, and Mr. Driver is a
24 person who's knowledgeable on our IT issues. They're both
25 available as resource witnesses, as necessary.

13:36:46 1 **THE COURT:** That's fine, and I appreciate that.

13:36:48 2 Those of you who are present as law clerks, interns,
3 or on behalf of media entities, if you could please mute
4 yourselves, and, of course, the rules prohibit you from
5 broadcasting, transmitting or recording the proceedings, same
6 rules that apply in court.

13:37:13 7 All right. I have received several of the reports and
8 several e-mail communications over the past week. They made
9 very interesting and informative reading, and I'd like to just
10 go over some of those materials and find out where we are, and
11 then I will turn it over to the parties and interested
12 nonparties to raise other issues and fill me in on how we are
13 doing on our shared goals.

13:37:49 14 So let me -- we had one issue that was raised the
15 first week in June about good time credit for convicted felons
16 who had been -- who are in the jail, not directly in our
17 bailiwick, but it was a question raised. There was 76 inmates
18 that had been identified as people who could be released if the
19 credits that should have been applied, but were, apparently,
20 disputed over in terms of how they were affected by various
21 executive and other orders, that several courts ruled that the
22 good time credits did apply, and the question was raised as to
23 whether that should happen so that those 76 people could be
24 released.

13:38:56 25 Can anyone speak to the status of that issue?

1 JUDGE RITCHIE: I can tell you what I know,
2 Your Honor, which is --

3 THE COURT: And this is Judge Ritchie?

4 JUDGE RITCHIE: Yes, ma'am.

5 THE COURT: Thank you.

6 JUDGE RITCHIE: -- somewhat limited. And in my
7 court -- and I'm speaking on -- on behalf of my court. The
8 issue -- the issue was raised that -- when a defendant pleaded,
9 and he wasn't released as expected. And so the way the
10 attorneys approached it -- since the governor's order prohibited
11 the sheriff from allotting good time credit, the attorneys in my
12 court, they apprised me of that, and I listened to their
13 concerns.

14 So they filed a motion for new trial on the basis, I
15 think, mainly of involuntary plea, because the defendant thought
16 that he or she -- I don't remember which now -- was going to get
17 that amount of credit and would be released. I granted the
18 motion for new trial, and immediately after that, the defendant
19 pleaded for time served, day for day, and that disposed of the
20 case and that took care of that case.

21 I haven't -- I have not had an attorney raise that
22 question to me since. I understand that there may be two people
23 in my court that the sheriff has notified me that they would be
24 eligible, but I haven't had an attorney give me the requisite
25 predicate to rule on it.

1 **THE COURT:** All right. This is the sheriff's
2 inquiry --

3 **JUDGE RITCHIE:** The sheriff --

4 **THE COURT:** -- the sheriff sends --

5 **JUDGE RITCHIE:** -- was informing me, yes, that I think
6 -- I believe there were two, if I remember, yes, ma'am.

7 **THE COURT:** So if I could ask Mr. Fogler: What is
8 the -- your information as to the status of the good-time credit
9 for convicted felons under the latest court decisions?

10 **MR. FOGLER:** As I advised the Court last week, the
11 list of those 76 inmates was split among the 22 felony district
12 courts, and the names were sent to each of the judges separately
13 and individually.

14 As is the case with -- with virtually every issue in
15 our case, every judge handles the -- their docket individually
16 and separately, and some of them responded quickly without the
17 necessity of a motion or other activity from the attorneys
18 involved to release the particular inmates in their court that
19 were part of that group; others did not.

20 So the -- the -- the bottom line is that the result
21 has been spotty and inconsistent among the 22 different judges.

22 **THE COURT:** Do you know today how many of those 76
23 have been released?

24 **MR. FOGLER:** I do not.

25 **THE COURT:** All right. I would like to ask you to

1 find out, and those that have not been, please contact Mr. Bunin
2 and Mr. Thiessen, on behalf of the private defense bar, and find
3 out, of those who have not been released, what court they're in
4 and whether any lawyer filed -- a motion seeking release on the
5 basis of good-time credits has been filed and, if not, guys, get
6 it filed.

1 3 : 4 3 : 0 8 7 *(Multiple speakers; indiscernible.)*

1 3 : 4 3 : 0 8 8 **THE COURT:** -- all right? And if you could do that
9 promptly and report back, that would be very helpful. Thank
10 you.

1 3 : 4 3 : 2 4 11 All right. Second issue on my list of just going
12 through your very helpful e-mails on which I was copied or that
13 were directed to me, there are now two lists that have been
14 provided to the judges. One is the first list, 400- -- and on
15 that list, there are -- of those still in jail, 426 detainees
16 that apparently -- well, they may not still be in jail. I'm not
17 sure.

1 3 : 4 4 : 0 7 18 There are 426 detainees on the first list that have no
19 prior violent convictions or current violent felony charges that
20 would disqualify them for release without financial conditions;
21 perhaps release, at all. Two hundred fifty-eight of those are
22 still in the Harris County jail. So I need to understand
23 something of why.

1 3 : 4 4 : 3 9 24 A second list consisting of arrests since the first
25 list, there are 324 names, apparently, on that list that were

1 sent to the felony courts the week of June 4th of people who
2 apparently -- and this may be in dispute -- have no
3 disqualifying felony prior convictions or present charges or
4 other holds requiring detention.

1 3 : 4 5 : 1 2 5 So I would like to know the status of those. I know
6 that we got a very helpful e-mail from Judge Warren in which he
7 says he had -- as of June 10th, his court, he had 12 people who
8 had -- who were presumptively -- on a list. Three were
9 released; two were subject to other holds; three did have prior
10 disqualifying convictions for violent acts; four were
11 potentially eligible, but of those, several had previously
12 failed to appear when given PR bonds on prior charges or
13 previously given PR bonds on these charges. It was unclear
14 which one, but that doesn't matter, I don't think.

1 3 : 4 6 : 0 9 15 His inquiry was do you need individualized bail
16 hearings for individuals who have previously failed to appear.
17 I'd be interested in hearing your reactions. My sense is that
18 you may well, because there may be exigent or extraordinary
19 circumstances that would explain and excuse the prior failure to
20 appear in a way that would make it appropriate to grant the PR
21 bond on the present charge.

1 3 : 4 6 : 4 7 22 And it would seem, to me, that an opportunity on the
23 part of a defendant to make that case is part of the
24 individualized bail determination inquiry, but that will not be
25 an across-the-board rule, and it will largely depend on defense

1 counsel to raise the issue and the need for such a hearing. I
2 do not fault the judges for not being able to figure out which
3 of the four who previously failed to appear on PR bonds is now,
4 in good faith, seeking an individualized hearing to explain why
5 one should issue in this case nonetheless.

13:47:43 6 Defense counsel would need to be filing those motions
7 when appropriate, I would think. I would welcome thoughts from
8 others more familiar with the process than I.

13:47:53 9 Mr. Fogler, Mr. Bunin, Mr. Thiessen --

13:47:55 10 **UNIDENTIFIED SPEAKER:** Your Honor --

13:47:55 11 **THE COURT:** -- on behalf of the plaintiffs?

13:48:01 12 **MR. FOGLER:** Your Honor, I would just echo the
13 comments that I made a moment ago because it applies equally
14 here. Judge Warren was the only judge who provided the kind of
15 fulsome explanation that we saw in his e-mail, but --

13:48:21 16 **THE COURT:** Because it was enormously helpful.

13:48:25 17 **MR. FOGLER:** It was, indeed. But as to the other 21
18 of the felony courts, there is a -- there are a wide range of
19 different handling methods or, sometimes, non-methods in
20 connection with how they receive these lists. Some of them
21 don't do anything with the list. Some of them are proactive,
22 and some wait for the defense counsel to make some motion.

13:49:01 23 **MR. THIESSEN:** And, Judge, if I may, just -- just to
24 be frank, I think we have about seven to 800 criminal defense
25 lawyers in HCCLA, and if you guys send me the list -- I know

1 most of these. I can get in touch with them.

13:49:11 2 If you tell me who these are, I will personally -- I
3 will, personally, reach out and call them. But I'm just --

13:49:17 4 **THE COURT:** Mr. Fogler, add him to the e-mail list.

13:49:22 5 **MR. THIESSEN:** So I will reach out to those lawyers.
6 I will tell them, "Hey, you have got this." But I hate to tell
7 you: Some of these lawyers are lazy, and they're not doing
8 it in other --

13:49:30 9 **THE COURT:** I know.

13:49:31 10 **MR. THIESSEN:** I don't know how to make them do it.

13:49:33 11 **THE COURT:** Well, those -- those who you know -- how
12 are you going to know which lawyers are representing which
13 defendant?

13:49:39 14 **MR. THIESSEN:** Well, I can look that up, right?
15 That's public record.

13:49:43 16 **THE COURT:** Okay. Right.

13:49:43 17 So, Mr. Fogler, if the sheriff can include
18 Mr. Thiessen and Mr. Bunin on the list every time it's sent out
19 to the individual courts, that will put Mr. Thiessen in a much
20 better position to proactively seek the help of the defense
21 lawyers, and I hope that helps. I agree with you we do not have
22 perfect control as of this point.

13:50:15 23 **JUDGE WARREN:** Judge Rosenthal -- Judge Rosenthal?

13:50:15 24 **THE COURT:** Yes. Who's --

13:50:15 25 **JUDGE WARREN:** This is Judge Warren --

13:50:17 1 **THE COURT:** -- speaking, please?

13:50:17 2 **JUDGE WARREN:** This is Judge Brian Warren. I would be
3 more than happy to contact or send an e-mail to the prosecution
4 and to any defense lawyer who's representing a particular
5 defendant who's on one of my lists.

13:50:28 6 **THE COURT:** That would be terrific.

13:50:30 7 **JUDGE WARREN:** So I think --

13:50:31 8 **THE COURT:** And if you can --

13:50:32 9 **JUDGE WARREN:** -- what Mark --

13:50:32 10 **THE COURT:** Judge Warren --

13:50:34 11 **JUDGE WARREN:** Yes, ma'am.

13:50:35 12 **THE COURT:** -- because your practices have been
13 praised as a role model, the more you can do to encourage your
14 colleagues, with Judge Ritchie's help, to follow your good
15 example, we all want those who should and can be released to be
16 released and ease the risk of continued overcrowding for
17 everyone --

13:51:01 18 **JUDGE WARREN:** I couldn't agree --

13:51:01 19 **THE COURT:** -- and protection of their constitutional
20 rights.

13:51:09 21 So the more you can do to encourage others to do as
22 you are doing and to share the information with the defense
23 lawyers, "I" -- "I haven't released this guy because it looks
24 like he had a prior failure to appear. Do you want to hear it?"
25 Whatever the appropriate outreach would be, I leave that to you.

13:51:34 1 **JUDGE WARREN:** And I made my -- and I'll be more than
2 happy to -- what -- on my list, it turned out to be less than
3 ten people -- or ten defense attorneys who I would have to
4 contact. So I don't mind sending those e-mails.

13:51:46 5 **THE COURT:** And I suspect that when you spread all
6 this amongst 22 judges and winnow it down to those that don't
7 have -- clearly don't have eligibility for release on a PR bond,
8 you're going to have a manageable number on any given day.

13:52:08 9 **JUDGE WARREN:** And I don't mean to cut off --

13:52:09 10 *(Multiple speakers; indiscernible.)*

13:52:09 11 **JUDGE WARREN:** -- Mr. Thiessen. So I just think it
12 might be -- what the -- the task that he is agreeing to
13 undertake I think is a lot -- having seen the list, may be a lot
14 for him to accomplish on his own, as opposed to having 22
15 individual judges doing it themselves, and that was --

13:52:27 16 **THE COURT:** Well, if --

13:52:27 17 **JUDGE WARREN:** -- the only reason I wanted to add
18 that.

13:52:29 19 **THE COURT:** I believe in belt and suspenders. If you
20 can do it with Mr. Thiessen and Mr. Bunin, with his people, that
21 should help.

13:52:39 22 **JUDGE WARREN:** I would be more than happy to do that.

13:52:42 23 **MR. THIESSEN:** I can call them. You know, I'll Google
24 their number and call them, but if they don't get the message or
25 I can't, you know -- I don't know how I can stay on track with

1 390 people.

13:52:52 2 **THE COURT:** Well, that's why the judge's proposal is a
3 large help --

13:52:59 4 **MR. THIESSEN:** Yes.

13:52:59 5 **THE COURT:** -- and it also -- and yes, obviously, we
6 recognize that you have a limit on your authority over any of
7 these individual lawyers.

13:53:11 8 **MR. KARAKATSANIS:** Your Honor --

13:53:11 9 **THE COURT:** You have a limit.

13:53:12 10 Yes, sir?

13:53:13 11 **MR. KARAKATSANIS:** Your Honor, this is Alec
12 Karakatsanis, if I may make a couple of preliminary framing
13 points that I think may help this discussion. One is a legal
14 point, and two are factual points that I think are very
15 important for the Court to understand.

13:53:26 16 The first is the legal point, which is that the word
17 "eligible for release" has been thrown around by various
18 parties, including the Court, in this conversation and previous
19 conversations --

13:53:39 20 **THE COURT:** That's a shorthand. It's a shorthand.

13:53:42 21 **MR. KARAKATSANIS:** Everyone is eligible for release
22 under Texas law and under federal law. No one may be detained
23 unless there is a finding, under Texas and federal law, that
24 their detention is necessary. And --

13:53:53 25 **THE COURT:** I understand, Mr. Karakatsanis. We're

1 talking about the practicalities now in trying to work out a
2 process that will help that. And I know you understand that,
3 but --

1 3 : 5 4 : 0 4 4 **MR. KARAKATSANIS:** I understand, Your Honor. I wanted
5 to make it very clear, though, that I don't think, from our --
6 from our understanding, that -- that most of the felony judges
7 are -- understand that, that point, and --

1 3 : 5 4 : 1 5 8 **THE COURT:** I think they do. I think they do.
9 Whether they are feeling equipped --

1 3 : 5 4 : 2 1 10 **MR. KARAKATSANIS:** (Indiscernible).

1 3 : 5 4 : 2 1 11 **THE COURT:** -- to deal with it is the issue that we're
12 dealing with, and that takes me --

1 3 : 5 4 : 2 4 13 **MR. KARAKATSANIS:** (Indiscernible).

1 3 : 5 4 : 2 4 14 **THE COURT:** -- to my next point, but go ahead first,
15 please.

1 3 : 5 4 : 2 8 16 **MR. KARAKATSANIS:** Just for a moment. There is --

1 3 : 5 4 : 3 0 17 **THE COURT:** Of course.

1 3 : 5 4 : 3 1 18 **MR. KARAKATSANIS:** -- confusion. Several of the
19 felony judges have struck down the executive order all together
20 as unconstitutional. Those judges clearly believe that anyone
21 is eligible for release.

1 3 : 5 4 : 4 1 22 Other felony judges I think, having heard this Court's
23 comments from last week being filtered through various sources,
24 believe that only some people on the sheriff's lists are
25 entitled to bail hearings, and I wanted to make that factual --

1 the Court aware of that factual point.

13:54:59 2 **THE COURT:** All right. I appreciate that.

13:55:03 3 **MR. KARAKATSANIS:** We -- and there is tremendous
4 confusion among even the felony judges and the parties about
5 what types of prior offenses would even qualify for the
6 executive order in those courts that haven't struck it down yet.
7 So I wanted to make that point very clear.

13:55:16 8 The second point is there are 39 more people in
9 custody as of yesterday than when the Court had its last hearing
10 on June 4th, including 26 more people in custody on felony
11 pretrial cases. This Court, last week, asked that bail hearings
12 be set automatically for at least the people on the lists. It's
13 our understanding, and I wanted to inform the Court, that has
14 not happened. Those hearings have not --

13:55:43 15 **THE COURT:** That was my next question. That's my next
16 question, if we can get to exactly those mechanics because
17 that's where the rubber and the road would meet. You're
18 absolutely right about that, Mr. Karakatsanis. And thank you --

13:55:57 19 **UNIDENTIFIED SPEAKER:** Judge Rosenthal, may I respond
20 to that?

13:56:01 21 **THE COURT:** Of course. Yes, of course. And -- but
22 then I do want to get to the interesting proposal of the sheriff
23 for the staggered individualized bail hearings scheduled that
24 would permit it to be done often, efficiently, virtually, and be
25 set up on an automatic basis, with counsel involved, because of

1 the added ways we've made that available.

1 3 : 5 6 : 3 5 2 So let's go ahead with your comment, and then we'll
3 talk about the sheriff.

1 3 : 5 6 : 4 2 4 **JUDGE WARREN:** And very brief on that. Knowing that I
5 was going to be participating in this Zoom call, I actually
6 talked to other judges. I have not had anyone come in as a new
7 case since, I believe -- I lose track of days being home with
8 children. So I apologize.

1 3 : 5 6 : 5 9 9 But since last week, I believe it was Thursday when we
10 had that call that I was not present on, understanding what this
11 Court's wishes were, I have been watching my new cases every
12 single day to see if anyone has been detained who would then,
13 presumptively, be -- when you would want us to have additional
14 scrutiny, and then have an additional immediate bond hearing for
15 personal recognizance bond.

1 3 : 5 7 : 2 6 16 I haven't had any individuals who have met that
17 bearing. I spoke with Chris Morton briefly before this phone
18 call. He has had two people this week who he's had those
19 hearings on, one of which was not released on a burglary,
20 because we have a Texas statute that says only an elected
21 sitting district court judge may release people on a PR bond on
22 a burglary.

1 3 : 5 7 : 4 4 23 He actually released that individual -- that was Judge
24 Morton -- and then he had a 23-kilo case of a person who is not
25 from Harris County, from surrounding areas, who was caught with

1 23 kilos of cocaine by the DEA, and he did not release.

13:57:59 2 So I know we've had ten of them, is my information
3 that I've gotten. So I've been told -- and I'm not sure what
4 information Mr. Karakatsanis has been given, but I've been told
5 by judges that we've had ten of these hearings this week based
6 on new arrests. I have not had anyone pop up on that list.
7 I've been diligently checking on it; however, I know that these
8 hearings have been taking place, at least per my conversation
9 with Judge Morton.

13:58:25 10 I've had other judges tell me they haven't had these
11 hearings because they haven't had someone who met the
12 eligibility requirement this week, but I know that Mr. Morton --
13 or Judge Morton, rather, has. So I just want to add that in and
14 give you some more information.

13:58:45 15 **MR. KARAKATSANIS:** Your Honor, we were told last week
16 at this Court's hearing that there was a list of people, and
17 that all of those -- and it was this Court's wish that all of
18 those people be automatically set for bail hearings. That's all
19 I was referring to. Those automatic bail hearings have not been
20 set, have not occurred.

13:59:08 21 **MR. FOGLER:** Perhaps, Your Honor, I can elucidate just
22 a bit. The sheriff and the judges have been conferring about
23 a -- a procedure, a mechanism for these virtual hearings. The
24 process has now been set up as it applies to new arrests that
25 have occurred.

1 I am told -- and I -- this is secondhand, so I --
2 it's -- but it's contrary to Judge Warren's information, that
3 there have been only two formal bail hearings by video, one
4 yesterday and one today, of new arrestees. I believe
5 Mr. Karakatsanis is correct that with respect to the list -- the
6 two lists --

7 **THE COURT:** Excuse me.

8 **MR. FOGLER:** -- the Court has --

9 **THE COURT:** Excuse me. Excuse me. I was disconnected
10 for about the last five minutes. I don't know what I missed,
11 and I apologize.

12 So I think I just interrupted Judge Ritchie, and I
13 apologize for that. But after Mr. Karakatsanis and
14 Judge Warren, what'd I miss?

15 **MR. KARAKATSANIS:** Your Honor, this is
16 Mr. Karakatsanis. I made an additional comment that was simply
17 to the effect that last week we heard, in this Court's
18 courtroom, about a large list from the sheriff, and this Court
19 expressed its wish that automatic bail hearings be set, pursuant
20 to the sheriff's protocol, for all the people on that list.

21 I was reporting to the Court that those hearings have
22 not been set and have not occurred, and then Mr. Fogler was
23 chiming in, I think, when this Court rejoined.

24 **THE COURT:** Okay. And we do have a detailed proposal
25 from the sheriff on a docket of virtual bail hearings. Group A

1 for courts 174 through 208; Group B for courts 209 through 351.
2 Group A would deal with the pretrial detainees at the 701
3 location on Tuesdays and Thursdays, and those still located at
4 the 1200 Baker location on Mondays and Wednesdays. The -- it
5 would be flipped for Group B.

1 4 : 0 1 : 4 2 6 The dockets would be made up of specific spaces on
7 specific floors scheduled for a specific time each day where the
8 inmates would be. Six courts at a time for pretrial detainees
9 at Baker, and six time -- simultaneously, obviously, for the
10 701 location; 12 total. Forty-five minute time sessions; 15
11 minutes between the sessions. It's ready to roll as of Monday
12 of this week.

1 4 : 0 2 : 2 0 13 Is it rolling? Obviously, a great deal of thought and
14 work went into that.

1 4 : 0 2 : 2 9 15 **MR. FOGLER:** I don't believe -- this is Murray Fogler
16 for the sheriff. I don't believe that the felony judges
17 accepted the proposal that you are referring to. They have put
18 in place a mechanism to have formal bail hearings for new
19 arrestees, but Mr. Karakatsanis is correct. I -- I believe that
20 I -- there have not been any formal bail hearings for the
21 inmates who are on the two lists that you previously referred
22 to.

1 4 : 0 3 : 0 5 23 As I was -- I think -- think you may have been
24 disconnected when I said that there have been two virtual formal
25 bail hearings this week, one yesterday and one today, of newly

1 arrested inmates in the jail.

1 4 : 0 3 : 2 4 2 **THE COURT:** I'm glad that those are occurring. Let's
3 go back to the ones who have been on the lists, not yet
4 released, identified as having eligibility, to use the term
5 loosely, that is, no prior convictions for violent felonies.
6 They're on the list of acceptable felonies for PR release, no
7 current violent charges, no sexual assault charges, and no other
8 detention or other holds -- ICE detention or other holds.

1 4 : 0 4 : 0 4 9 So we have a list of people who were previously
10 identified, 258, still, from the first list, and 324 on the
11 second that are, apparently, still waiting for formal
12 individualized bail hearings. What's the status of getting
13 those -- they're not new arrests, but they're waiting.

1 4 : 0 4 : 3 8 14 What can be done to get hearings for those
15 individuals? And this is a question for Judge Ritchie, for
16 Mr. Bunin, for Mr. Thiessen, as well as others.

1 4 : 0 4 : 5 7 17 *(No response.)*

1 4 : 0 4 : 5 8 18 **THE COURT:** No one has any thoughts, or are you all
19 disconnected?

1 4 : 0 5 : 0 6 20 **JUDGE RITCHIE:** I was on mute. I'm sorry, Your Honor.

1 4 : 0 5 : 0 8 21 **THE COURT:** Am I connected?

1 4 : 0 5 : 0 9 22 **JUDGE RITCHIE:** Yes, ma'am. I can hear you.

1 4 : 0 5 : 1 0 23 I have --

1 4 : 0 5 : 1 2 24 **THE COURT:** All right.

1 4 : 0 5 : 1 3 25 **JUDGE RITCHIE:** My information that I would give you

1 would be contrary to some of the information that you've heard.
2 I have been furnished a list of -- from the sheriff's office on
3 more than one occasion. I've gone through that list and
4 considered the people and given bonds that I thought were
5 appropriate.

1 4 : 0 5 : 3 3 6 Yesterday -- I had the list. It was a repeat of a
7 list I previously had, but I had everyone on that list placed on
8 my docket. I did have a hearing yesterday, not -- not a virtual
9 hearing. The defendant was in the holdover, and I had the
10 defendant brought out before me with counsel, went on the record
11 and had the hearing, and granted the relief that was
12 appropriate.

1 4 : 0 6 : 0 5 13 The -- also, I had one that was on the list that has
14 pleaded for back time, and all -- all those that weren't reached
15 yesterday have been carried over till tomorrow, and that will --

1 4 : 0 6 : 2 1 16 **THE COURT:** And is this people who -- dating back to
17 April, May, in terms of how long they may have been there?

1 4 : 0 6 : 3 1 18 **JUDGE RITCHIE:** Some of them -- some of them have,
19 yes, but this -- this is a list that I've previously gone
20 through before. Apparently, on one, there had already been a
21 prior hearing, and a PR bond was denied on that, but I said,
22 "Bring" --

1 4 : 0 6 : 4 7 23 **THE COURT:** Formal or informal? Was it a formal or
24 informal hearing?

1 4 : 0 6 : 5 2 25 **JUDGE RITCHIE:** Judge, I don't remember. I don't

1 remember on this particular defendant. It just says --

14:06:55 2 **THE COURT:** All right.

14:06:56 3 **JUDGE RITCHIE:** It just says that I denied a PR bond
4 on 4/16/20. So I -- I can't --

14:07:02 5 **THE COURT:** Well, we're talking about a formal
6 hearing, which may not be necessary unless there's a previous
7 denial after an informal consideration.

14:07:13 8 **JUDGE RITCHIE:** Right. Right. Yesterday that I had
9 was a formal hearing on the record with the court reporter,
10 and --

14:07:21 11 **THE COURT:** And my question -- my question, Judge, is
12 can those be made -- set quickly --

14:07:28 13 **JUDGE RITCHIE:** Yes.

14:07:28 14 **THE COURT:** -- and how promptly --

14:07:30 15 **JUDGE RITCHIE:** Yes.

14:07:30 16 **THE COURT:** -- and in numbers?

14:07:32 17 **JUDGE RITCHIE:** Yes. And the numbers, I think you're
18 going -- you're going to find the numbers are not quite as great
19 as you've been led to believe. After --

14:07:41 20 **THE COURT:** They may not be, but --

14:07:44 21 **JUDGE RITCHIE:** Yes. If I can, I'll -- I can explain
22 to you the process that's now been put in place.

14:07:51 23 **THE COURT:** All right. Please do, sir.

14:07:53 24 **JUDGE RITCHIE:** After -- after our conference on
25 Thursday, immediately six agencies got together, the district

1 court's administration, the district clerk's office, pretrial
2 services, universal services, the Harris County Sheriff's Office
3 and the district attorney, and they were told we needed a
4 project that would identify these people that were denied a PR
5 bond by the magistrate, and that the Court would like to have --
6 us have a hearing within 48 hours.

1 4 : 0 8 : 2 8 7 They worked diligently over the weekend. All the --
8 all the agencies worked together very well, and they put
9 together a program, and I have -- I had the first one yesterday,
10 and the program works like this: If someone has been denied a
11 PR bond, and they go through this -- this program, and they will
12 immediately, if they're -- if they're arrested, if it's before
13 12:01, they'll show on the next day's docket. If it's after
14 12:01, it's going to go on the following docket.

1 4 : 0 9 : 1 3 15 Yesterday, for the first time, there were four, total,
16 that were pulled and shown to be eligible. One hit my court,
17 and I immediately, rather than carrying it to the next day, I
18 had a formal bond hearing --

1 4 : 0 9 : 2 7 19 **THE COURT:** Which is terrific.

1 4 : 0 9 : 2 9 20 **JUDGE RITCHIE:** -- and I understand that the process
21 is still working, and that as -- as of tomorrow, I think a total
22 of nine have been pulled, and they're set automatically for a
23 hearing before the various district judges, and they'll be
24 addressed at that point.

1 4 : 0 9 : 4 7 25 Now, I --

1 **THE COURT:** So my question to you -- Judge Ritchie, if
2 I may ask one clarifying question.

3 **JUDGE RITCHIE:** Yes, ma'am.

4 **THE COURT:** It sounds like the process you're
5 describing is for new arrestees; is that correct?

6 **JUDGE RITCHIE:** That's correct.

7 **THE COURT:** So what are you doing about the big
8 backlog.

9 **JUDGE RITCHIE:** All right.

10 **THE COURT:** -- of people who --

11 **JUDGE RITCHIE:** Well --

12 **THE COURT:** -- are waiting and did not have this
13 procedure in place --

14 **JUDGE RITCHIE:** What I --

15 **THE COURT:** -- when they were arrested?

16 **JUDGE RITCHIE:** What I'm telling the Court right now,
17 I don't know that the backlog is that great based on what I have
18 in my court. The --

19 **THE COURT:** It may not be, but all the more reason to
20 get to it immediately.

21 **JUDGE RITCHIE:** Right. I had them all -- as I was
22 saying, I had them all --

23 **THE COURT:** If it's not that great for any individual
24 judge --

25 **JUDGE RITCHIE:** I -- I said for my court. I can't

1 tell -- I can't speak for another judge's docket. But
2 yesterday, I had --

1 4 : 1 0 : 3 8 3 **THE COURT:** And I agree.

1 4 : 1 0 : 3 9 4 **JUDGE RITCHIE:** -- every one of these people placed on
5 my docket for review, and I -- I reviewed -- and some pleaded
6 and others were taken care of. Those that were not taken care
7 of yesterday are all on my docket tomorrow, and they will be
8 addressed tomorrow, and that should be --

1 4 : 1 0 : 5 7 9 **THE COURT:** And I get --

1 4 : 1 0 : 5 8 10 **JUDGE RITCHIE:** -- the end of that list.

1 4 : 1 0 : 5 9 11 **THE COURT:** And that's terrific, Judge, but I would
12 like to have -- may I inquire, then -- again, putting it on the
13 sheriff to recirculate to each judge a list of everyone who is
14 still detained, not a new arrest, who is potentially eligible --
15 even if they've had a prior failure to appear, there's a basis
16 to have that explained and promptly set for an individualized
17 bail determination hearing -- the backlog, for each judge --
18 each of the 22 judges, the defendants -- the detainees in their
19 court who are not new arrests and have not benefited from this
20 new improved procedure, can we get that quickly to the judges so
21 Judge Ritchie can apply his new procedure to those prior
22 arrests?

1 4 : 1 2 : 1 5 23 **MR. FOGLER:** Yes, Your Honor.

1 4 : 1 2 : 1 6 24 **THE COURT:** Mr. Fogler?

1 4 : 1 2 : 1 7 25 **MR. FOGLER:** Yes.

1 **THE COURT:** All right. Judge Ritchie, will that help
2 you and your colleagues?

3 **JUDGE RITCHIE:** Absolutely. Send us a list, and we'll
4 look at each one of them, and some of the names may be
5 duplicative. We've seen them before, but that's fine.

6 **THE COURT:** That's all right.

7 **JUDGE RITCHIE:** Just send the list --

8 **THE COURT:** It doesn't matter because you've already
9 had a formal bail hearing before.

10 **JUDGE RITCHIE:** Right. Right.

11 **THE COURT:** So you need -- it's not duplicative.

12 **JUDGE RITCHIE:** Well, some of them had a formal bail
13 hearing, I'm certain. I can't tell you which ones at this point
14 because I don't have that in front of me. Some of them have had
15 a formal -- most of them are informal, great majority.

16 **THE COURT:** Right. That's --

17 **JUDGE RITCHIE:** Rarely do I have a formal one, but I
18 believe I have in the past. But most of them -- most of them
19 are informal and the attorneys, because of the technology, they
20 can Zoom in and Zoom out from the courtroom to courtroom to ask
21 judges to consider the bond status of their clients, which they
22 do.

23 **THE COURT:** Well, they're entitled to a formal hearing
24 with evidence, if that's what they want to do. They're entitled
25 to that.

1 4 : 1 3 : 2 5 1 **JUDGE RITCHIE:** Yes.

1 4 : 1 3 : 2 5 2 **THE COURT:** So when I say an opportunity -- a formal
3 individualized bail determination hearing, I mean that they are
4 entitled to that opportunity.

1 4 : 1 3 : 3 6 5 **JUDGE RITCHIE:** We grant them that opportunity.

1 4 : 1 3 : 4 0 6 **THE COURT:** And that's my question. If you're -- if
7 you can grant it promptly -- I understand you are granting them
8 promptly for new arrests, but now you have to address this
9 backlog. And there may be, as you say, a relatively small
10 number of those who have not already been released who are
11 eligible because they don't have disqualifying prior convictions
12 for violence, for example.

1 4 : 1 4 : 0 6 13 But the fact that there are relatively smaller numbers
14 when viewed not as an aggregate, but divided in 22 different
15 ways for each judge, makes it all the more manageable.

1 4 : 1 4 : 2 2 16 **JUDGE RITCHIE:** Right.

1 4 : 1 4 : 2 3 17 **THE COURT:** And removes -- and removes reasons for
18 delay.

1 4 : 1 4 : 2 8 19 **JUDGE RITCHIE:** Right. And then when the sheriff
20 sends the list to the judges, if he would be kind enough to copy
21 the district attorney, because the district attorney is helpful
22 in bringing to our attention something that maybe has not been
23 known before. The pretrial services may only have information
24 for convictions, arrests in Harris County, but the district
25 attorney's office can inform the Court whether there are

1 convictions from out of state, and we're able to make an
2 informed decision.

1 4 : 1 5 : 0 0 3 **THE COURT:** And I think that would be helpful. I also
4 believe that Mr. Bunin should be copied, Mr. Thiessen should be
5 copied, and Mr. Manne, Mr. Karakatsanis and Ms. Rossi should be
6 copied.

1 4 : 1 5 : 1 9 7 **MR. THIESSEN:** Judge, could I -- could I make a
8 suggestion? Would you mind if I put this list on the Harris
9 County Criminal Lawyers website and just put a blast to
10 everybody, Look up your name and see if you have a client? I
11 mean, I'll do that, if I'm allowed to share this list with the
12 general membership, and I would go ahead --

1 4 : 1 5 : 3 7 13 **THE COURT:** Any objection?

1 4 : 1 5 : 3 9 14 **MR. THIESSEN:** -- myself or my office to start calling
15 them or e-mailing people as we get down that list to help these
16 judges. But I don't mind sending a blast out to the entire
17 HCCLA list.

1 4 : 1 5 : 5 0 18 **THE COURT:** That's Mr. Thiessen speaking.

1 4 : 1 5 : 5 1 19 Is there any objection to that --

1 4 : 1 5 : 5 3 20 **MR. THIESSEN:** Yes.

1 4 : 1 5 : 5 3 21 **THE COURT:** -- on behalf of any party?

1 4 : 1 5 : 5 6 22 **JUDGE RITCHIE:** Not as a party --

1 4 : 1 5 : 5 6 23 **THE COURT:** Anybody?

1 4 : 1 5 : 5 6 24 **JUDGE RITCHIE:** Not as -- I'm not objecting, but I
25 would hope that the list is a current one, and it has been --

1 4 : 1 6 : 0 5 1 **THE COURT:** Yes.

1 4 : 1 6 : 0 6 2 **JUDGE RITCHIE:** -- reviewed and not be the same list.

3 Some of these people have already pleaded. They show on the
4 list. They're already out of jail. They've already made bond.
5 They shouldn't have been on the list in the first place.

1 4 : 1 6 : 1 9 6 **THE COURT:** If the sheriff can make -- if the sheriff
7 can bring it up to date, that would be great. So you would take
8 the first list that was generated when we started having these
9 discussions, bring it up to date to eliminate those that have
10 already been released or have pleaded, and make sure that it is
11 both current and thorough, and send it -- if nobody objects,
12 send it to Mr. Thiessen for posting on the website, send it to
13 Mr. Bunin for distribution within his office to the lawyers so
14 they know what to do, and do it promptly. And send it to
15 Mr. Manne, Mr. Karakatsanis, Ms. Rossi.

1 4 : 1 7 : 1 0 16 Anyone else?

1 4 : 1 7 : 1 3 17 **MR. FOGLER:** We will do so, Your Honor.

1 4 : 1 7 : 1 4 18 **THE COURT:** Mr. Manne, Mr. Karakatsanis, is that
19 acceptable to you?

1 4 : 1 7 : 2 2 20 **MR. KARAKATSANIS:** Number one, Your Honor, we were
21 actually not copied on the various communications that this
22 Court referenced earlier --

1 4 : 1 7 : 2 8 23 **THE COURT:** Well, I'm now telling -- I'm now asking if
24 there's -- I'm now asking that you be added to that list.

1 4 : 1 7 : 3 3 25 **MR. KARAKATSANIS:** Yes. Thank you.

1 And -- and, secondly, we don't have an objection to
2 this, just wanted to get some clarification from the Court. I
3 mean, it's our understanding that at the June 4th hearing a week
4 ago, there was a list, and this Court asked that bail hearings
5 be set automatically in the coming days for the people on that
6 list. And I think what we heard today is that that just didn't
7 happen. There has been no hearings. That backlog has not been
8 touched.

9 And now what I think that we're hearing is --

10 **THE COURT:** I think you're right. You're right. It
11 has only been new arrests. What we're now talking about is the
12 backlog, as well as the new arrests.

13 **JUDGE RITCHIE:** That's not true.

14 **THE COURT:** So I think --

15 **JUDGE RITCHIE:** That's not true, Your Honor. I just
16 told you --

17 **THE COURT:** Well, you did have hearings for the new
18 arrests.

19 **JUDGE RITCHIE:** Absolutely. We've had hearings, and I
20 had one yesterday on that list. So --

21 **THE COURT:** On the new arrests?

22 **JUDGE RITCHIE:** Yes. On the --

23 **THE COURT:** Was this --

24 **JUDGE RITCHIE:** Right.

25 **THE COURT:** -- the --

14:18:25 1 JUDGE RITCHIE: Right.

14:18:25 2 *(Multiple speakers; indiscernible.)*

14:18:33 3 THE REPORTER: I'm sorry. There were multiple people
4 speaking.

14:18:36 5 THE COURT: Yeah. I'm sorry.

14:18:36 6 I'm sorry. Judge Ritchie, was that the new arrests?

14:18:40 7 JUDGE RITCHIE: I did the new arrests.

14:18:41 8 THE COURT: I'm talking about the backlog.

14:18:43 9 JUDGE RITCHIE: I'm talking about the, quote, backlog,
10 which I don't think is going to be quite as onerous as the -- as
11 you've been told. On that list --

14:18:51 12 THE COURT: I would agree.

14:18:52 13 JUDGE RITCHIE: I had a hearing yesterday on that list
14 and granted relief. And all those people were on my docket
15 yesterday, and those that weren't reached are carried over till
16 tomorrow, and after that it should be finished.

14:19:06 17 UNIDENTIFIED SPEAKER: Your Honor --

14:19:10 18 THE COURT: Make sure -- the sheriff is going to get
19 you the list of the backlog so that you'll be able to make sure
20 that, in fact, you have captured all of them and provided prompt
21 automatic virtual -- virtual individualized bail determination
22 hearings for all of them.

14:19:33 23 MR. DURFEE: Your Honor, this is Scott Durfee. I just
24 wanted to clarify that the district attorney, you know, is -- is
25 supportive of the idea of -- of these bail hearings, but we

1 would ask for some reasonable notice before they're scheduled.
2 We're not asking for a lengthy period of time, but we do need to
3 have an opportunity to prepare for these hearings.

1 4 : 1 9 : 5 3 4 **THE COURT:** The day before will be plenty. I agree
5 with you, and the day before, when they're set, as Judge Ritchie
6 has indicated -- you've got the dockets. That would be your
7 notice.

1 4 : 2 0 : 0 8 8 **MR. DURFEE:** Your Honor, I think one day's notice may
9 be difficult in these proceedings. I'd ask for at least two or
10 three --

1 4 : 2 0 : 1 3 11 **THE COURT:** If you need more, you can ask -- if you
12 need more, you can ask the judge for more, can't you?

1 4 : 2 0 : 1 8 13 **MR. DURFEE:** We certainly can, Judge.

1 4 : 2 0 : 2 1 14 **THE COURT:** I suggest -- because many of them, you may
15 not need more time. You may be able to get it up and say, "We
16 don't object" --

1 4 : 2 0 : 2 7 17 **MR. DURFEE:** I just don't --

1 4 : 2 0 : 3 0 18 **THE COURT:** -- or, "We do object for these reasons."

1 4 : 2 0 : 3 2 19 **MR. DURFEE:** I just wanted to be very clear that if
20 there are going to be a number of bail hearings scheduled on the
21 same day with -- with virtually no notice, there's going to
22 be -- you can't -- the expectation should not be that we're
23 going to be ready to litigate every one of those bail hearings
24 on that day.

1 4 : 2 0 : 5 3 25 **THE COURT:** And you may not be able to, but they

1 should be set. You will have access promptly to the docket
2 settings. You will have plenty of -- you will know if there is
3 any need for more time. In many of them, there may not be. In
4 some, there may be.

1 4 : 2 1 : 1 4 5 Rather than delay them all because a few may need
6 another day or two. It seems more prudent, since there's
7 already been a significant delay for this backlog, to
8 presumptively set them. And this backlog you have had standing
9 there for a long time, some of them with no individualized bail
10 determination hearing.

1 4 : 2 1 : 4 7 11 **MR. KARAKATSANIS:** Your Honor, if I may --

1 4 : 2 1 : 5 4 12 **THE COURT:** And that should -- yes?

1 4 : 2 1 : 5 5 13 **MR. KARAKATSANIS:** Trying to understand what happened
14 in the past week after this Court said that a denial of a
15 personal bond at the magistration should be treated as a request
16 for an automatic bail setting, that should be set. There were
17 several hundred people on the sheriff's list.

1 4 : 2 2 : 1 1 18 Judge Ritchie committed to doing it on behalf of the
19 other judges. That hasn't been done. The sheriff attempted to
20 get it done. Still wasn't done. I'd like to understand --

1 4 : 2 2 : 2 0 21 **THE COURT:** Okay. Mr. Karakatsanis, I think the
22 answer that I received -- and, Judge Ritchie, you need to
23 correct me if I'm wrong -- is that that is being done, at least
24 by him and by Judge Warren, and, he believes, on behalf of the
25 other judges, virtually, and I gather they each declared their

1 homes courtrooms for the purpose of the Open Records Act.

1 4 : 2 2 : 4 3 2 You need to verify that for me, Judge Ritchie.

1 4 : 2 2 : 4 6 3 **JUDGE RITCHIE:** I --

1 4 : 2 2 : 4 6 4 **THE COURT:** But assuming that -- hold on -- that this
5 has been done for new arrests, but not for the backlog, not for
6 the people who were arrested before this last week, and that's
7 what we're talking about now.

1 4 : 2 3 : 0 1 8 Judge Ritchie --

1 4 : 2 3 : 0 3 9 **JUDGE RITCHIE:** It's my --

1 4 : 2 3 : 0 3 10 **THE COURT:** -- what'd I say that was wrong?

1 4 : 2 3 : 0 6 11 **JUDGE RITCHIE:** What I'm saying is that to the best of
12 my knowledge, each judge is reviewing and setting those that
13 were on the lists that have been presented. On the new -- on
14 the new arrests, as they're coming in -- and like I say,
15 they're -- they don't seem to be, so far, that many.

1 4 : 2 3 : 2 5 16 Some judges may do them -- may do them remotely.

17 Other judges, such as myself, I come to the courthouse every
18 day. I take the bench every day I have a docket, and I do them
19 here at the court, and they'll be done there not at the -- not
20 on a Zoom hearing in the sheriff's office, though we appreciate
21 their cooperation.

1 4 : 2 3 : 4 9 22 **THE COURT:** As long as you don't have -- as long as
23 you -- well, because the issue is as long as you have enough
24 courtrooms. You can't use the lack of courtrooms as a reason
25 not to have the hearings promptly, number one. Number two, as

1 long as you have attorneys who are willing to come to court and
2 able to do so --

1 4 : 2 4 : 0 8 3 **JUDGE RITCHIE:** They appear by Zoom, most of them.

1 4 : 2 4 : 1 0 4 **THE COURT:** -- whether prosecutors or defense lawyers.
5 If they can appear by Zoom, with you in court, then that is not
6 a problem.

1 4 : 2 4 : 2 0 7 **JUDGE RITCHIE:** I'm sorry?

1 4 : 2 4 : 2 0 8 **THE COURT:** Can they?

1 4 : 2 4 : 2 0 9 **JUDGE RITCHIE:** Yes. They're all invited -- defense
10 counsel and the district attorneys are all able to appear by
11 Zoom.

1 4 : 2 4 : 3 0 12 **THE COURT:** Very good. That's helpful to know.

1 4 : 2 4 : 3 3 13 **JUDGE RITCHIE:** I don't require --

1 4 : 2 4 : 3 4 14 **THE COURT:** So if I can respond to Mr. Karakatsanis's
15 question, there is -- for those judges who are using the prior
16 lists, it will be provided -- up-to-date lists, accurate as to
17 present status of the detainees, identifying the ones who are
18 potentially eligible for PR bonds and who have had them denied,
19 whether at the magistration level or informal bail hearing, and
20 a formalized bail hearing promptly set with notice to all the
21 parties that have been listed, including plaintiff's counsel in
22 this case, Mr. Thiessen, Mr. Bunin, obviously the DA, and
23 hearings will be held promptly -- individualized, evidentiary if
24 needed, bail determination hearings, and that an updated list
25 will be provided by the sheriff as quickly as practical, which I

1 hope will be before the end of the day tomorrow, as well as new
2 arrests that continually are added.

14:25:58 3 Does that work?

14:26:00 4 **MR. BIGGS:** Adam Biggs, Your Honor. This is Adam
5 Biggs for state intervenors. May we also please -- may we
6 please also be included on the transmittal e-mail, Your Honor?

14:26:16 7 **THE COURT:** Fine with me. Any objection?

14:26:20 8 *(No response.)*

14:26:20 9 **THE COURT:** Very good.

14:26:21 10 **MS. SPINKS:** And I would like --

14:26:22 11 **THE COURT:** Waiting for you to ask.

14:26:24 12 **MS. SPINKS:** And, Your Honor, we'd like to be included
13 as well, Harris County.

14:26:28 14 **THE COURT:** All right. I need each of you to send
15 your request to the sheriff so that he can keep track.

14:26:36 16 **MR. BIGGS:** Happy to do so.

14:26:36 17 **UNIDENTIFIED SPEAKER:** Your Honor --

14:26:39 18 **THE COURT:** Ms. Spinks -- I'm sorry. Ms. Jimenez, is
19 that okay with you?

14:26:43 20 *(No verbal response.)*

14:26:47 21 **MR. FOGLER:** I will answer for her.

14:26:49 22 **THE COURT:** Ms. Jimenez, are you with us?

14:26:51 23 **MR. FOGLER:** We will make sure everybody gets copied.

14:26:53 24 **THE COURT:** Go ahead, Mr. Fogler.

14:26:55 25 **MR. FOGLER:** I said we will make sure --

1 4 : 2 6 : 5 6 1 **THE COURT:** You are a great man.

1 4 : 2 6 : 5 6 2 **MR. FOGLER:** -- everyone gets copied.

1 4 : 2 7 : 0 0 3 **THE COURT:** And I said you're a great man. That was a
4 thank you.

1 4 : 2 7 : 0 3 5 I think that would be very helpful, and the
6 transparency it adds to the process can only be useful.

1 4 : 2 7 : 1 2 7 All right. What else -- so now I have the final
8 report from Mr. Banks who said that of the 1,153 cases for whom
9 the presentence -- or pretrial assessments have been done, the
10 PSAs, there were (indiscernible) for whom that wasn't done.
11 Those are to come --

1 4 : 2 7 : 4 6 12 **THE REPORTER:** I'm sorry, Your Honor. There was a
13 lag. I didn't hear the number mentioned.

1 4 : 2 7 : 4 8 14 **THE COURT:** There were 100- -- 1,193 who had -- on the
15 list. PSAs were done on 1,153. Forty are outstanding, to come.
16 Of the 1,153 cases, 565 have no prior violent convictions or
17 prone to disqualifying charges involving violence or sexual
18 offenses, and no other detention holds.

1 4 : 2 8 : 2 4 19 What's the status of those 565? Are they the ones in
20 the backlog that the sheriff is going to send an updated list on
21 so that they can be given prompt individualized bail
22 determination hearings in each of the felony district judge's
23 courts, with availability by Zoom for anybody who wants to
24 appear in that fashion, and on -- even without a formal request?

1 4 : 2 9 : 0 2 25 **MR. FOGLER:** Your Honor, this is Murray Fogler. I

1 believe those are on the list, but they will be included when we
2 present the refreshed list to everybody hopefully tomorrow.

1 4 : 2 9 : 1 5 3 **THE COURT:** Would you include me on that circulation
4 list, too, please?

1 4 : 2 9 : 2 0 5 **MR. FOGLER:** Of course.

1 4 : 2 9 : 2 5 6 **MR. BUNIN:** Judge, this is Alex Bunin, Harris County
7 Public Defender. I just wanted to point out that we're probably
8 going to have some disagreements with the folks that Mr. Banks
9 excluded. There's some disagreement --

1 4 : 2 9 : 3 5 10 **THE COURT:** I would expect so.

1 4 : 2 9 : 3 8 11 **MR. BUNIN:** Yeah.

1 4 : 2 9 : 4 0 12 **THE COURT:** I would expect so, which is why you need
13 an individualized hearing, and you might need to put on
14 evidence.

1 4 : 2 9 : 4 7 15 **MR. KARAKATSANIS:** Your Honor --

1 4 : 2 9 : 4 7 16 **THE COURT:** And that may be as simple as prior court
17 records.

1 4 : 2 9 : 5 2 18 **MR. KARAKATSANIS:** I think it's very important,
19 Your Honor, to understand two key facts I worry are being lost
20 here. Number one is that there are almost 4,000 people in the
21 Harris County jail right now who have not received a formal bail
22 hearing in front of a felony district court judge. What we're
23 talking about now is a carefully curated list of people from the
24 sheriff who we all believe, informally among this group here on
25 the phone, are the most likely to be given release because they

1 have no prior --

1 4 : 3 0 : 2 4 2 **THE COURT:** Right.

1 4 : 3 0 : 2 4 3 **MR. KARAKATSANIS:** -- (indiscernible) no -- everybody
4 else is still entitled to a hearing, and what Mr. Bunin is
5 saying is that, in fact, there are people who are not on that
6 list, by the time it gets to the judges, solely because of some
7 decision that they disagree with.

1 4 : 3 0 : 3 9 8 So I think what's critical is that we develop some --
9 and we're not opposed to starting with those people that we all
10 believe are most likely to get released --

1 4 : 3 0 : 4 8 11 **THE COURT:** Right.

1 4 : 3 0 : 4 9 12 **MR. KARAKATSANIS:** -- that's what we thought was
13 happening last week, and we're learning it didn't happen, but --

1 4 : 3 0 : 5 2 14 **THE COURT:** I think we have a starting point,
15 Mr. Bunin.

1 4 : 3 0 : 5 4 16 **MR. KARAKATSANIS:** -- everybody gets --

1 4 : 3 0 : 5 5 17 **THE COURT:** I think we have -- I agree. I think we
18 ought to start with the ones who are most likely to be released.
19 Get those, as quickly as possible, done, and then we'll have a
20 third list of those who have been -- who (indiscernible) charge.
21 They're entitled to a hearing. It may well be denied easily
22 because of histories of violence, what they're charged with or
23 other reasons, but they may be entitled to a hearing. And it
24 may be a very short hearing, who knows -- I certainly don't --
25 but they're entitled to have their cases docketed.

1 What's the procedure for doing those? Essentially,
2 the second backlog, as well as new arrestees who fall in that
3 category.

4 And I guess the question here is: What is the
5 allegation of the judge to hold a hearing for those who facially
6 are not eligible for release on a PR bond.

7 Mr. Manne, what is your position on behalf of your
8 client, or Mr. Karakatsanis?

9 **MR. KARAKATSANIS:** Your Honor, all of these
10 individuals are, quote, unquote, eligible for release on a PR
11 bond. That's up to the felony district court judge. They all
12 have the same, as presumptively innocent --

13 **THE COURT:** Well, they are -- yes. I agree. None of
14 these people are convicted --

15 **MR. KARAKATSANIS:** Correct.

16 **THE COURT:** -- of anything.

17 **MR. KARAKATSANIS:** In fact, as in federal court, many
18 people charged with very serious offenses are released, if the
19 Court determines that that are other conditions, short of
20 detention, that could reasonably assure public safety and their
21 court appearance. So from our perspective, the procedure that
22 this Court outlined last week for batch No. 1, as soon as batch
23 No. 1 is over, that same procedure could and should, and the
24 sheriff is prepared to apply, to everybody else.

25 **THE COURT:** I don't disagree. We have three

1 categories. The new arrests, as to whom this procedure is being
2 applied; whether they are likely to be released, that is, not
3 clearly within one of the disqualifying or -- criteria, such as
4 charged with a violent -- or a violent offense currently or a
5 recent conviction for violent sexual assault. They're still
6 entitled to a hearing. You're right.

1 4 : 3 3 : 5 5 7 And there is the second wave, the second list of
8 people who have been arrested, are likely to be released in the
9 sense that not -- and maybe there are disputed disqualifying
10 prior or present -- prior convictions and present charges, but
11 they're disputed, or it is undisputed that there are none.
12 That's sort of the second priority because we have the greatest
13 prospect of getting those individuals -- or those individuals
14 being entitled to some of the relief or all of the relief they
15 seek.

1 4 : 3 4 : 3 9 16 And then the third category is the prior arrestees who
17 have been denied, informally, any kind of bond who are indigent,
18 but who would be entitled to a hearing. Now, I would -- now
19 that the plaintiff class in this case, as I understand it, was
20 limited to those who were detained solely because of their
21 indigency, that doesn't mean that others were not entitled to
22 hearings, and we're talking about the process, not the creation
23 of any substantive right here.

1 4 : 3 5 : 2 2 24 So the sheriff --

1 4 : 3 5 : 2 2 25 **JUDGE WARREN:** Judge Rosenthal, may I --

14:35:25 1 **THE COURT:** Yes. Yes. Who is speaking, please?

14:35:27 2 **JUDGE WARREN:** This is Judge Warren. I apologize.

14:35:29 3 You -- you said recent history. May I have a
4 clarification as to what the Court means by "recent"?

14:35:36 5 **THE COURT:** It's not just recent. There's no time
6 limit in the executive order that applies, as I understand it.

14:35:45 7 **JUDGE WARREN:** Maybe I misunderstood, and I apologize.

14:35:47 8 **THE COURT:** But they're similarly -- no, you didn't.
9 I used the word, but it was an example, and I thought --

14:35:55 10 **JUDGE WARREN:** Yes, ma'am.

14:35:56 11 **THE COURT:** -- I predicated it with that, but if I
12 wasn't clear, I apologize.

14:35:59 13 All right --

14:35:59 14 **JUDGE WARREN:** (Indiscernible.)

14:35:59 15 **THE COURT:** -- so we have the three categories, but we
16 have -- no problem. My failure to communicate.

14:36:11 17 We have the three categories in terms of triage, and I
18 am very hopeful that we have a good way to go forward,
19 particularly with the sharing of information, and the
20 opportunity for prompt intervention by interested parties to
21 ensure that this is being done.

14:36:35 22 **MS. WOOD:** Judge, may I?

14:36:38 23 **THE COURT:** Who is this?

14:36:40 24 **MS. WOOD:** Hi. Sarah Wood from the public defender's
25 office. So we've been struggling to help the defense bar to

1 file more motions, deal with these changes and to keep them
2 informed, and we've had, you know, some -- a few issues where
3 it's difficult for us to get information that needs to be
4 conveyed.

1 4 : 3 7 : 0 3 5 And so following up on Judge Warren's question about
6 eligibility -- or prioritization, perhaps, is a better word,
7 we -- there's never been anything official or any sort of
8 information really put out there about what are considered
9 violent offenses.

1 4 : 3 7 : 2 6 10 So it's very difficult to tell how the lists are being
11 created, what prior it is that your client may have that is the
12 issue. So I -- I would suggest that that could be helpful, to
13 make that policy known as far as it's being used to create the
14 lists.

1 4 : 3 7 : 4 7 15 Additionally, we would --

1 4 : 3 7 : 4 9 16 **THE COURT:** In this case, Mr. Bunin, you may want to
17 speak -- excuse me. Yeah. Go ahead. Go ahead, please. I
18 thought you were finished. I'm sorry.

1 4 : 3 8 : 0 0 19 **MS. WOOD:** Oh, and just the other thing. Also, we're
20 really trying to keep our members informed about how the court
21 procedures are going to work logistically. I -- I think I heard
22 the judge mention earlier that there was a multi-agency meeting
23 about how the dockets are going to work, and I don't think that
24 the public defender's office was included in that.

1 4 : 3 8 : 2 4 25 So we haven't received any information about these

1 docketing policies at this point. So -- so those are just a
2 couple of places where, you know, it could be helpful.

1 4 : 3 8 : 3 7 3 **THE COURT:** I -- I think that the best way to handle
4 your first question is to have the DA, through Mr. Durfee, the
5 sheriff, through Mr. Fogler, and, if appropriate, input from
6 Mr. Biggs, on behalf of the Attorney General, on what the
7 parties' shared understanding and the interested nonparties'
8 shared understanding is of disqualifying and qualifying, that
9 is, eligible offenses or offenses that, if currently charged or
10 previously convicted, would be violent offenses for this
11 purpose.

1 4 : 3 9 : 2 2 12 We did not define it across the board in prior -- in
13 response to prior requests because it is -- can be quite
14 complicated. But in this case, as I recall, there were some
15 pretty good bright lines that the parties, themselves, through
16 various kinds of orders and interpretations had applied. If
17 there is a consensus as to those, that would be enormously
18 helpful.

1 4 : 3 9 : 4 6 19 Second point, on the procedures, I believe that there
20 has been a discussion. The sheriff came up with one that is
21 being -- that hasn't been adopted by the judges, in part because
22 they didn't think it was necessary, and there is an
23 individualized approach. Some have used their courtrooms plus
24 Zoom. Others are using only Zoom, I gather, and have made their
25 homes Public Information Act courtrooms.

1 4 : 4 0 : 2 3 1 If there is a way to put -- have individual judges
2 inform the bar, private and public defender, what procedures
3 they're following in their docketing -- in their notices of
4 setting, for example, it would be helpful. But it sounds like
5 for every court -- and, Judge Ritchie, please tell me if I'm
6 right or wrong. Judge Warren -- it sounds like for every court,
7 whether the judge is in court or him or herself Zooming in, the
8 parties, the lawyers can appear by Zoom.

1 4 : 4 1 : 1 0 9 These hearings will be set automatically when the --
10 when bail is denied on magistration or an informal hearing, and
11 they will be prioritized according to those who are potentially
12 eligible based on the absence of the violent offenses currently
13 charged or prior -- previously convicted or other holds and
14 violence or sexual assaults.

1 4 : 4 1 : 4 7 15 And then the second priority given to all of those who
16 have been waiting, and the new arrests who may be subject to
17 disqualifying prior or present charges or convictions, but who
18 are entitled to a new hearing.

1 4 : 4 2 : 0 8 19 Does that help, Ms. Wood?

1 4 : 4 2 : 1 2 20 **MS. WOOD:** Yes, it does. Thank you, Judge.

1 4 : 4 2 : 1 5 21 **THE COURT:** I wish I could be more specific to each of
22 the 22, but I know Judge Ritchie will work with those who are
23 tasked with this incredibly important work to communicate it
24 well, and I thank him for that.

1 4 : 4 2 : 4 4 25 With the information that will be exchanged, do the

1 parties agree that perhaps a phone call at the same time next
2 week might be appropriate? I don't want to take up your time
3 unnecessarily. This is a busy group.

1 4 : 4 3 : 0 3 4 **MR. MANNE:** Your Honor, it's Neal Manne for the
5 plaintiffs. We're always happy to get on a call like this.
6 We've been having these calls for three months. In my view, the
7 process is a total failure. The minor incremental things that
8 have been accomplished are dwarfed by the scope of the problem.

1 4 : 4 3 : 2 7 9 In the three months that we've been having these
10 calls, the jail population has increased, not decreased.
11 There's a surge of COVID-19 in Texas. The governor attributes
12 it, in part, to the jail. He's right.

1 4 : 4 3 : 4 2 13 **THE COURT:** He is right on that.

1 4 : 4 3 : 4 4 14 **MR. MANNE:** We don't -- I don't see this process
15 solving either of the problems that the Court has focused on or
16 the somewhat different issues that are the actual subject of our
17 lawsuit.

1 4 : 4 4 : 0 0 18 **THE COURT:** I agree with the second.

1 4 : 4 4 : 0 2 19 **MR. MANNE:** We intend to bring all of the judges into
20 the case soon, probably next week. The ones -- I'll put it this
21 way: I believe that some of the judges are as unhappy with this
22 situation and this process as the plaintiffs are, and I believe
23 that some of the judges will be coming into this case as
24 intervenors because they agree with the relief we seek.

1 4 : 4 4 : 3 7 25 The ones who don't, we'll bring in as defendants. We

1 will proceed with the case as quickly as we can to work
2 dispositive motions. We want to try to get back to the issues
3 that the case is actually about. We filed an emergency motion
4 because we saw an emergency problem three months ago. The
5 Court, in its wisdom, denied our motion.

1 4 : 4 5 : 0 5 6 I don't see the process that we have been engaged in
7 since then as getting us toward any meaningful resolution of
8 these issues, and so -- we're happy to participate in the calls
9 as often as you want. We'll get on one every day, but we're
10 also planning to try to restart the litigation and move it into
11 a position where the Court can consider substantive motions.

1 4 : 4 5 : 3 7 12 **THE COURT:** And I don't disagree with that, Mr. Manne.
13 I have envisioned this and proceeding, if you will, along kind
14 of two tracks. On the first -- this case was stayed for a long
15 time on the parties' initiative to commit negotiations.

1 4 : 4 5 : 5 2 16 **MR. MANNE:** Right.

1 4 : 4 5 : 5 2 17 **THE COURT:** So that stay has now been lifted to permit
18 the parties to resume the focus on written and (indiscernible)
19 traditional fashion, no pun intended, to focus on the discovery
20 and exchange of information necessary to bring to the Court a
21 full record adequate to rule on the substantive issues. A
22 schedule order has been put into place to accomplish that, as
23 you know.

1 4 : 4 6 : 2 5 24 I do not see that as inconsistent with interim
25 measures designed to respond to this extraordinary crisis, and

1 that's what we're focusing on now, the very practical -- not the
2 jurisprudential so much as the practical. You got this backlog.
3 You got a lot of the people. You have judges who are out of
4 their courtrooms, and a reduction in the number of courtrooms.

1 4 : 4 6 : 5 7 5 You have lawyers perhaps unwilling and unable to come
6 to court because of the pandemic. All of these issues are
7 practical issues that require a very practical
8 the-devil-resides-in-the-details approach.

1 4 : 4 7 : 2 1 9 At the same time, as the lawyers go through the
10 process of developing the law and the facts in an adversarial
11 fashion that the Court needs to make an accurate, fair ruling on
12 the important issues of substantive law presented.

1 4 : 4 7 : 4 5 13 So this is a two-track road, and my question to this
14 group is whether -- assuming it is worthwhile to continue to
15 have accountability calls, if you will, should they be weekly,
16 or do you want more time in between to implement the new
17 procedures? You tell me.

1 4 : 4 8 : 1 6 18 Mr. Fogler, Mr. -- Judge Ritchie, excuse me,
19 Mr. Bunin --

1 4 : 4 8 : 2 3 20 **MR. FOGLER:** Your Honor, this is Murray Fogler. I
21 think a weekly call is salutary. I think it helps spur
22 activity. And while no one is satisfied, I think, if you let
23 more time pass before you hear where we are, then I think there
24 will be even less progress made.

1 4 : 4 8 : 4 9 25 **THE COURT:** I fear you may be right.

1 Is there anyone who would object to having a weekly
2 similar call?

3 **MR. MANNE:** The plaintiffs do not object. We'll be
4 happy to participate weekly.

5 **THE COURT:** Judge Ritchie, do you think it's helpful?

6 **JUDGE RITCHIE:** I think it's helpful, and I'll do my
7 best to attend --

8 **THE COURT:** Thank you.

9 **JUDGE RITCHIE:** -- the calls.

10 **THE COURT:** I thank you for that.

11 All right. I think we have some additional tasks that
12 are clearly laid out, and I hope for some meaningful progress
13 over the next week. I will look forward to virtually seeing you
14 a week from today, same time, same place. The link will be sent
15 out.

16 Your presence and participation and practicality are
17 most appreciated. Thank you very much. I hope you-all continue
18 to keep safe and well until we talk again. Thank you.

19 Anything further from anyone?

20 *(No response.)*

21 **THE COURT:** There being nothing further, we are
22 adjourned. I appreciate your help.

23 *(Proceedings concluded at 2:50 p.m.)*

24 -o0o-

25 I certify that the foregoing is a correct transcript

1 from the record of proceedings in the above matter to the best
2 of my ability and skill, and that any indiscernible designations
3 are because of audio interference that precluded me from
4 understanding the words spoken.

5
6 Date: June 13, 2020

7 /s/ Heather Alcaraz
8 Signature of Court Reporter
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<p>JUDGE RITCHIE: [60] JUDGE WARREN: [18] 13/22 13/24 14/1 14/6 14/8 14/10 14/17 14/25 15/8 15/10 15/16 15/21 19/3 44/24 45/1 45/6 45/9 45/13 MR. BIGGS: [3] 5/16 39/3 39/15 MR. BUNIN: [3] 5/6 41/5 41/10 MR. DURFEE: [8] 4/22 6/19 6/21 34/22 35/7 35/12 35/16 35/18 MR. FOGLER: [18] 4/25 9/9 9/23 12/11 12/16 20/20 21/7 22/14 28/22 28/24 32/16 39/20 39/22 39/24 40/1 40/24 41/4 51/19 MR. GRINSTEIN: [1] 6/10 MR. KARAKATSANIS: [24] 4/13 16/7 16/10 16/20 17/3 17/9 17/12 17/15 17/17 18/2 20/14 21/14 32/19 32/24 36/10 36/12 41/14 41/17 42/2 42/11 42/15 43/8 43/14 43/16 MR. MANNE: [6] 4/11 49/3 49/13 49/18 50/15 52/2 MR. STEFFENSEN: [2] 6/5 6/7 MR. THIESSEN: [11] 5/19 5/22 12/22 13/4 13/9 13/13 15/22 16/3 31/6 31/13 31/19 MS. KASE: [1] 5/13 MS. OGG: [1] 6/15 MS. ROSSI: [1] 6/2 MS. SPINKS: [3] 5/3 39/9 39/11 MS. WOOD: [5] 5/10 45/21 45/23 46/18 48/19 THE COURT: [165]</p>	<p>THE REPORTER: [2] 34/2 40/11 UNIDENTIFIED SPEAKER: [4] 12/9 18/18 34/16 39/16 - -o0o [1] 52/24 / /s [1] 53/7 1 1,153 [3] 40/8 40/15 40/16 1,193 [1] 40/14 100 [1] 40/14 1000 [1] 1/18 1010 [1] 2/8 1019 [2] 2/3 2/10 10th [1] 11/7 11 [1] 1/10 12 [2] 11/7 22/10 1200 [1] 22/4 1201 [1] 2/18 12548 [1] 2/14 12:01 [2] 26/13 26/14 13 [1] 53/6 1400 [1] 1/21 1405 [1] 1/24 15 [1] 22/10 15th [2] 2/3 2/10 1601 [1] 1/14 1640 [1] 2/7 174 [1] 22/1 19 [1] 49/11 1900 [1] 1/21 1:32 [1] 1/6 2 20 [1] 25/4 20009 [1] 1/15 202 [1] 1/15 2020 [2] 1/10 53/6 2044 [1] 2/23 208 [1] 22/1</p>	<p>209 [1] 22/1 209th [1] 3/3 21 [1] 12/17 212 [1] 1/22 2120 [1] 2/15 22 [7] 9/11 9/21 15/6 15/14 28/18 30/14 48/22 226 [1] 1/5 23 kilos [1] 20/1 23-kilo [1] 19/24 250-5584 [1] 3/12 258 [1] 23/10 26 [1] 18/10 274-5132 [1] 2/4 274-5140 [1] 2/11 2:50 [1] 52/23 3 324 [2] 10/25 23/10 336-8330 [1] 1/22 337th [1] 2/25 351 [1] 22/1 3720 [1] 2/22 39 [1] 18/8 390 [1] 16/1 4 4,000 [1] 41/20 4/16/20 [1] 25/4 400 [1] 10/14 426 [2] 10/15 10/18 444-2044 [1] 2/23 463-2120 [1] 2/15 474-5073 [1] 1/25 48 [1] 26/6 481-1010 [1] 2/8 4:19-CV-226 [1] 1/5 4th [3] 11/1 18/10 33/3 5 5073 [1] 1/25 5100 [1] 1/18 512 [2] 1/25 2/15 5132 [1] 2/4 5140 [1] 2/11</p>
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